IT 01-0085-GIL 11/08/2001 BASE INCOME

General Information Letter: "Catch-up" contributions to pension plans, to the extent excluded or deducted in computing federal adjusted gross income, are excluded from base income.

November 8, 2001

Dear:

This is in response to your e-mail dated November 8, 2001 in which you state the following:

> The Economic Growth and Tax Relief Reconciliation Act of 2001 enacted on the Federal level contained provisions to not only increase the limits that employees can contribute to a 401k, 403b, SEP, Simple and 457 plans, it also contained a provision for a new "catch-up" limits for employee contributions into these plans.
>
> Effective 1/1/02 a participant would be eligible to make "catch-up" contributions if they are already an eligible participant in one of the required plans and are age 50 or older. Also a participant who is projected to attain age 50 before the end of a calendar year is considered to be age 50 as of January 1st of that year.
>
> The regulations provide that elective deferrals made by a "catch-up" eligible participants are treated as catch-up contributions if they exceed the otherwise applicable limit, to the extent that they do not exceed the maximum dollar amount of catch-up contributions they are exempt for federal income tax purposes in additional to the normal contributions limits.
>
> The applicable catch-up dollar amounts under a 401k, 403b, SEP, 457 is $1000.00 for 2002, $2000.00 for 2003, $3000.00 for 2004, $4000.00 for 2005 and $5000.00 for 2006 and thereafter. The applicable catch-up dollar amount for a Simple plan is $500.00 for 2002, $1000.00 for 2003, $1500.00 for 2004, $2000.00 for 2005 and $2500.00 for 2006 and thereafter.
>
> Please advise if your taxing jurisdiction will consider the "catch-up" contributions to be taxable or exempt. Please also indicate that tax type on your response, income tax, state unemployment etc. [sic]

According to the Department of Revenue ("Department") regulations, the Department may issue only two types of letter rulings: Private Letter Rulings ("PLR") and General Information Letters ("GIL"). The regulations explaining these two types of rulings issued by the Department can be found in 2 Ill.Adm.Code §1200, or on the website http://www.revenue.state.il.us/legalinformation/regs/part1200.

Due to the nature of your inquiry and the information presented in your letter, we are required to respond with a GIL. GILs are designed to provide background information on specific topics. GILs, however, are not binding on the Department.

Determination of net income for Illinois income tax purposes begins with federal adjusted gross income ("AGI"). Accordingly, any sum properly excluded or deducted from income for federal purposes prior to the determination of AGI is effectively excluded from income for Illinois' purposes. Section 203 of the Illinois Income Tax Act ("IITA") adds back certain amounts of income to federal AGI.

To the extent elective deferrals made by a “catch-up” eligible participant are excluded from federal adjusted gross income, such deferrals are not added back in determining Illinois base income by Section 203 of the IITA, therefore such deferrals are exempt from Illinois income tax (i.e., state income tax treatment is the same as federal income tax treatment).

As discussed above, the base income of an individual is equal to his or her federal adjusted gross income, as modified by Section 203 of the IITA. Salary deferrals, including “catch-up” deferrals as described under The Economic Growth and Tax Relief Reconciliation Act of 2001, are not includable in an individual’s federal adjusted gross income and do not cause a modification of such federal adjusted gross income under Section 203 of the IITA.

As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department. Should you have additional questions, please do not hesitate to contact our office.

Sincerely,

Matthew S. Crain
Staff Attorney -- Income Tax